

Federal Court



Cour fédérale

Date: 20250507

Docket: IMM-11535-23

Citation: 2025 FC 832

Ottawa, Ontario, May 07, 2025

PRESENT: Mr. Justice Pentney

BETWEEN:

MANJIT KAUR SANDHU

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] At the age of 17, Manjit Kaur Sandhu, the Applicant in this matter, entered into an arranged marriage in India, and then moved in with her husband's family. The couple never had children. The Applicant and her husband came to Canada as visitors in 2000, and she has been here ever since.

[2] The Applicant and her husband filed a claim for refugee protection in June 2000, but it was denied. They submitted an application for a Pre-Removal Risk Assessment in 2003, but it was refused. The Applicant and her husband remained in Canada, and she took an active role in the lives of her husband's six Canadian siblings and their offspring. The Applicant submits that in total, she has thirty-five family members in Canada. She also volunteers at her local Gurdwara.

[3] In December 2020, the Applicant's husband died as a result of complications associated with COVID-19. In May 2022, the Applicant submitted an application for permanent residence from within Canada on humanitarian and compassionate grounds ("H&C") under section 25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27. The H&C application was based on the Applicant's lengthy establishment in Canada, the best interests of the children in Canada, and the hardship she would face on a return to India as an elderly widow with no connections to that country.

[4] The Officer refused her application. While acknowledging her lengthy stay in Canada and her involvement with her community, the Officer found that the fact that she had remained in Canada without authorization diminished the weight to be attributed to this factor. On family ties, the Officer noted the support the Applicant has received from her late-husband's family in Canada, and gave some weight to the emotional hardship she would experience if she had to return to India. The Officer noted that the impact of physical separation between the Applicant and her family could be offset by maintaining relationships via alternative modes of communication. The Officer also noted that the Applicant was not the primary caregiver for the

children of her nieces and nephews in Canada, and found insufficient evidence that the children would be unable to adjust to her departure from Canada.

[5] On hardship, the Officer found insufficient evidence to demonstrate that the Applicant would not be able to obtain the necessities of life on her return to India, and noted that while she would face challenges adjusting to life there, she would be returning to a country where she had lived and worked and where her siblings continue to reside.

[6] Weighing all of these factors, the Officer found that the Applicant had failed to establish that her circumstances justified a positive decision. The Officer therefore refused her application for H&C relief.

[7] The Applicant seeks judicial review of this decision. The standard of review that applies is reasonableness, in accordance with the framework set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov], and recently confirmed in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21.

[8] In summary, under the *Vavilov* framework, a reviewing court “is to review the reasons given by the administrative decision maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual constraints” (*Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at para 2. The onus is on the applicant to demonstrate that the “shortcomings or flaws relied upon ... are sufficiently central or significant to render the decision unreasonable”. (*Vavilov* at para 100).

[9] Much has been written about the test that to be applied when examining H&C applications, and whether a particular form of words used by an officer in a decision reflects the proper approach. Rather than adding to that growing list of jurisprudence, it seems to me helpful to return to some simple first principles.

[10] The leading decision on H&C relief is *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*]. It seems to me that if we should take anything from that decision, it is that trying to analyze H&C claims by applying formulas or particular forms of words is a mistake, because that can lead decision-makers astray from the essential equitable purpose of section 25. Justice Zinn provided the following helpful clarification of the point of entry into the analysis, in *Zhang v Canada (Citizenship and Immigration)*, 2021 FC 1482 at para 1:

There is a fundamental and significant difference when making decisions on humanitarian and compassionate grounds between, on the one hand, observing that the relief is exceptional and, on the other hand, requiring an applicant seeking relief on humanitarian and compassionate grounds to show exceptional circumstances warranting the relief.

[11] As I said in *Kambasaya v Canada (Citizenship and Immigration)*, 2022 FC 31 at para 56: “Life is complicated. Families more so.” Because of this, H&C applications can be based on an endless array of factors and considerations, reflecting the rich pageantry of human experience. In the face of this, what is an officer to do when reviewing a claim for H&C relief?

[12] *Kanthasamy* tells us that in order to give effect to the equitable purpose of section 25, officers should ask one simple question: do the “facts, established by the evidence... excite in a

reasonable [person] in a civilized community a desire to relieve the misfortunes of another – so long as those misfortunes ‘warrant the granting of special relief’ from the effects of the provisions of the Immigration Act?” (*Kanthasamy* at para 13, citing *Chirwa v. Canada (Minister of Citizenship and Immigration)* (1970), 4 I.A.C. 338 at p 350). An important consideration in answering this question is the impact of uprooting the claimant from the ties that bind them to Canada, whether family, friends, faith or other community etc.. This impact is to be assessed not only on the particular claimant but also with regard to those who may benefit from their presence in Canada.

[13] Applying that framework to the instant case, I find the decision is unreasonable because the Officer failed to demonstrate an engagement with the crux of the Applicant’s claim, assessed and understood in the real-world context of her circumstances. I will not deal with all of the Applicant’s submissions, because three examples will suffice to explain my reasoning.

[14] First, the Officer examined the Applicant’s family ties in the context of her establishment in Canada. While the Officer acknowledged the close family connections, the discussion of this element focuses entirely on the support that the Applicant receives from her late-husband’s family in Canada. This is one part of the equation and it reflects the Applicant’s evidence, including her own letter and the many letters of support she provided. What is missing, however, is any examination of the other side of the coin: the support that the Applicant provides to her family members, and their mutual inter-dependence.

[15] For example, the evidence shows that the Applicant has taken an active role in supporting her brother-in-law and his family, since he is living with Parkinson's and dementia. Similarly, she has assisted her sister-in-law who is dealing with ongoing mobility issues as a result of polio, and experiences recurring migraines. Another letter explained the support she provided to her husband's cousin, who had two children born with disabilities. Other examples of the Applicant's contribution to the lives of her late-husband's family are provided in the letters of support she submitted to the Officer.

[16] The Respondent argues that the Officer acknowledged the Applicant's family relationships in Canada and that it was not unreasonable to fail to list every piece of evidence. That may be true, but it is equally true that the failure to grapple with essential evidence on a key question can be an indication of a failure of responsive justification. I find that the Officer's analysis of the Applicant's family ties is unreasonable because it fails to show any engagement with crucial evidence. One of the harms associated with requiring the Applicant to leave Canada is the loss that she and her family would suffer because of the ample evidence of their daily, extensive and ongoing inter-dependence. That needed to be considered, and I find that the Officer's decision does not demonstrate that was done.

[17] Second, and in a similar way, the Officer diminished the Applicant's role in the lives of the children whose interests she invoked in her application. The Officer notes that these children will remain in Canada with their primary caregivers, and finds that the evidence did not establish that "the children would be unable to adjust to the [A]pplicant's departure from Canada." With respect, that is not the test. There is ample evidence in the record that the Applicant played an

active role, both in India and since her arrival in Canada, in the lives of her nieces and nephews (the children of her husband's siblings), and she continues to play an active role in the lives of their children (whom she refers to as her "grandchildren"). The Officer did not examine what would be in the best interests of these children, nor did the Officer engage with the evidence about the impact her departure would have on their lives.

[18] Finally, and perhaps most importantly, the decision does not show that the Officer ever truly engaged with the Applicant's lived reality. The Officer's reference to the assistance the Applicant might receive from her siblings in India exemplifies this point. The record shows that the Applicant entered into an arranged marriage at age 17, and immediately began to live with her husband's family, helping them raise his younger siblings. The role she assumed then has carried on throughout her life in India and then Canada, as laid out in some detail in the support letters.

[19] The crucial question for the Officer was whether removing the Applicant from her life in Canada – in light of the life she has lived, the relationships she has built and the nature and extent of interdependencies with her late-husband's family in Canada – would excite in a reasonable person in a civilized community the desire to relieve her misfortunes.

[20] Stepping back to examine the decision as a whole, I find that it does not demonstrate that the Officer ever grappled with this matter. That is what the law required the Officer to do, in light of the evidence in the record. The failure to demonstrate that the Officer engaged in the

analysis required by the law, and considering the evidence in the record, is the hallmark of an unreasonable decision.

[21] For the reasons set out above, the application for judicial review will be granted. The decision refusing the Applicant's application for permanent residence on H&C grounds will be quashed and set aside. The matter will be remitted back for reconsideration by a different officer. In light of the passage of time, the Applicant shall be given the opportunity to provide further evidence and make new submissions, if she wishes to do so.

[22] There is no question of general importance for certification.

JUDGMENT in IMM-11535-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.
2. The decision is quashed and set aside. The matter is remitted back for reconsideration by a different officer.
3. In light of the passage of time, the Applicant shall be given the opportunity to provide further evidence and make new submissions, if she wishes to do so.
4. There is no question of general importance for certification.

"William F. Pentney"
Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-11535-23

STYLE OF CAUSE: MANJIT KAUR SANDHU v THE
MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 24, 2024

JUDGMENT AND REASONS: PENTNEY J.

DATED: MAY 7, 2025

APPEARANCES:

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